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## Senate

### CONCLUSIVE SUPPORT FOR PRESIDENT REAGAN'S RECENT ACCUSATION THAT THE SOVIETS ARE VIOLATING SALT II BY FLIGHT-TESTING TWO NEW ICBM'S

Mr. McCLURE. Mr. President, I strongly support President Reagan's recent accusation that the Soviet Union is in clearcut violation of the 1979 SALT II Treaty by flight-testing two new ICBM's, one more than is allowed by SALT II. The National Security Council is currently studying this issue, and it will inevitably have to support the President's public position, partly because the information already publicly available on this problem is overwhelmingly compelling. But in addition, the Reagan platform boldy pledged to end the Carter administration's "cover-up of Soviet SALT I and SALT II violations," and so for the Reagan administration to do anything with this latest Soviet SALT II violation other than to declare it publicly would risk major retreat from its platform and rhetoric and bitter political controversy. For the Reagan administration to be softer than the Carter administration on Soviet SALT violations would be unthinkable. If this were to happen, there could be strong pressure to have a Senate debate and vote on the status of SALT II.

Mr. President, I would first like to present some comments on the legal status of the SALT II Treaty. Then I will analyze the relevant texts of SALT II's article IV paragraph 9, limiting the testing of new ICBM's. Then I will give the Reagan administration's interpretation of article IV paragraph 9, and the Reagan administration's public revelations on the number and description of new Soviet ICBM's now undergoing flight-testing. I will analyze some unclassified data on the second new Soviet ICBM which shows conclusively that the second new Soviet ICBM clearly meets SALT II's article IV definition of a new type ICBM. Finally, I will provide the Carter administration's interpretation of article IV paragraph 9, and show how it is parallel to and consistent with the Reagan administration's interpretation.

President Reagan's own recent accusation that the Soviets are in violation of SALT II is thus conclusively supported with strong, unclassified evidence and consistent, reasonable interpretations of the relevant SALT II provision by two administrations. To argue that there is a loophole in SALT II's article IV paragraph 9 allowing free Soviet flight-testing of multiple new ICBM's while the United States is prohibited by its own interpretation of article IV paragraph 9 from testing even its sole new ICBM—the MX—is ridiculous. Indeed, the proponents of the prohibition of U.S. MX ICBM testing in order to comply with SALT II, led by Senator HART, must agree that their own interpretation of SALT II's article IV paragraph 9 is consistent with the Carter and Reagan administrations', and must now also be applied to the Soviets as well. Nevertheless, the Carter administration's former chief SALT II negotiator has tried to apply a new interpretation of this SALT II provision which was never mentioned to Congress during the Carter administration's testimony on SALT II in 1979. Indeed, Carter administration statements explicitly denied that the Soviets could circumvent the article IV paragraph 9, prohibition on flight-testing more than one new ICBM.

#### THE U.S. CONSTITUTIONAL AND INTERNATIONAL LEGAL STATUS OF SALT II

I have been in the forefront of the opposition to former President Carter's SALT II Treaty, because it is fatally flawed, unequal, and destabilizing to world peace. I agree with President Reagan's 1980 statement that the SALT II Treaty is inconsistent with the law of the land on U.S. arms control objectives—the Jackson amendment of 1972 to SALT I—which requires United States-Soviet equality. But SALT II allows the Soviets a monopoly of heavy and very heavy ICBM's, excludes the intercontinental Backfire bomber, and allows huge Soviet advantages in warheads, counterforce capabilities, megatonnage,

and stockpiled missiles. Moreover, I agree with President Reagan's 1980 statement that it was illegal for the United States to comply with the unratified SALT II Treaty. The Constitution and the Arms Control and Disarmament Act of 1961 both prohibit U.S. compliance with an arms control treaty until the Senate has given its advice and consent for the President to ratify the treaty.

Former President Carter proclaimed the 1980 Presidential election to be a national referendum on his SALT II Treaty. Carter and his treaty lost. But President Reagan has recommitted the United States to the Carter policy of doing nothing to "undercut" the unratified SALT II Treaty so long as the Soviets showed "equal restraint." In effect, this Carter-Reagan policy constitutes de facto Presidential ratification of the SALT II Treaty without the advice and consent of the Senate. State Department testimony and recently declassified Defense Department directives define the "no undercut" policy as requiring full U.S. compliance with the precise provisions of the unratified SALT II Treaty, while the Soviets are showing no restraint at all.

Therefore, for 2 years I have been in favor of either President Reagan requesting that SALT II Treaty be withdrawn from the Senate, or alternatively, a Senate motion to send the treaty back to the President with instructions to renegotiate strategic equality with the Russians. Prolonged U.S. compliance with an unratified SALT II Treaty is both unconstitutional and illegal, as well as dangerous to U.S. national security. Navy Secretary Lehman publicly stated this as early as February 1981. We are violating our own Constitution and laws to comply precisely with an unratified SALT II Treaty, while the Soviets have all the benefits of U.S. compliance and the obligation only to do nothing to defeat the object and purpose of SALT II.

In summary, I am extremely concerned about the constitutional, legal, political, and national security problems with prolonged U.S. unilateral compliance with a SALT II Treaty which has not received the advice and consent of the Senate for ratification. I led a successful effort in September to October 1977 to prevent extended or prolonged U.S. compliance with the expired SALT I Interim Offensive Agreement from hindering U.S. strategic modernization programs. This effort was in accordance with the 1961 Arms Control and Disarmament Act. A similar effort to prevent an unratified SALT II Treaty from hindering U.S. strategic modernization programs could be mounted at any time. A Senate debate and vote on the status of SALT II could have major implications for the Reagan administration's arms control policies, strategic modernization programs, and defense budget.

There are, however, international legal obligations irrespective of the U.S. constitutional and legal problems. During the period in which the United States constitutionally mandated treatymaking powers of the President and the Senate are being worked out, however prolonged, the United States does incur certain international legal obligations involving SALT II compliance.

Without debating the wisdom of SALT II and without accepting the propriety of the U.S. position that we will do nothing that would "undercut" the SALT II Treaty, it is recognized that the United States is complying strictly with SALT II. We at least have a right and an obligation to determine whether the Soviets are meeting the stated U.S. criteria for that policy; that is, that the Soviets show "equal restraint" and do nothing to "defeat the object and purpose" or to "undercut" SALT II. Whether or not the Soviets should be held to compliance with the precise provisions of SALT II, like the United States, is disputable. But under any interpretation of Soviet obligations under SALT II, a Soviet violation of a fundamental provision of SALT II constraining new type ICBM's would both "undercut" and "defeat the object and purpose" of SALT II, and cannot be regarded as equal restraint.

A Presidential request to withdraw the SALT II Treaty from the Senate's Executive Calendar would constitute a formal U.S. declaration of intention not to ratify. Absent such a request, or a Senatorial resolution sending the treaty back to the President, the United States has certain compliance obligations under SALT II. Absent Soviet declaration not to ratify, so does the U.S.S.R.

Hence since June 18, 1979, when the SALT II Treaty was signed by both sides, the Soviets have had an obligation to do nothing which would "defeat the object and purpose" of the SALT II Treaty. Whether this means they are bound by the precise provisions of SALT II may be disputed, but the United States has declared that the United States will not "undercut" SALT II so long as the Soviets show "equal restraint." This entails an obligation to do nothing irreversible which would defeat the object and purpose of SALT II. If the Soviets were to violate the most significant constraint of SALT II, article IV paragraph 9, in an irreversible way clearly

on to say on page 16 that:

. . . This inhibits a party from actually *testing* more than *one* new type of ICBM under the guise of a test program for a single new type. (Emphasis added)

This last statement clearly establishes the fact that the Carter administration did not interpret SALT II's article IV, paragraph 9 as allowing the Soviets 12 free flight tests of a second new type missile, or 1 free flight test each of 12 new type missiles.

The Carter administration went on to say that any Soviet attempt to test more than one new type ICBM "could be a subject for discussion in the Standing Consultative Commission." (The SALT II Agreement, State Department Document 12B, June 18, 1979, page 25.)

Additional Carter administration policy statements on SALT II allowing testing of only one new ICBM are equally clear and consistent.

In the booklet "SALT II.—In Perspective," background report, Office of Media Liaison, White House Press Office, May 1979, on pages 8 and 9, the Carter administration stated:

Each side will be permitted to deploy only *one* new type ICBM for the duration of the Treaty.

(Note. This means the United States has the right to proceed with the MX missile, while permitting the Soviet Union only *one* new type of ICBM.)

The Soviet Union may choose to use its exemption to deploy a single warhead missile, or it may deploy a new MIRVed missile to replace the SS-17 and SS-19 . . . This also means that future modifications of existing ICBMs must be merely minor variations of current models. (Emphasis added)

State Department current policy No. 73, "Limiting the Strategic Arms Race," by Secretary of State Vance, July 24, 1979, stated on page 2:

Each side will be limited to *one* entirely new strategic land-based missile. (Emphasis added.)

State Department current policy No. graph 9 would prevent the Soviets from being able to test more than one new type ICBM. Carter administration SALT II testimony consistently denied any such loophole. Indeed, Carter administration statements explicitly denied that the Soviets could circumvent the prohibition on flight-testing more than one new type ICBM.

THE CARTER ADMINISTRATION'S INTERPRETATION OF ARTICLE IV, PARAGRAPH 9 IS CONSISTENT WITH THE REAGAN ADMINISTRATION'S

The Carter administration, like the Reagan State Department statement from December 1982 noted above, took a clear and firm interpretation of article IV, paragraph 9. There was nothing in the Carter administration's testimony on SALT II to even suggest a loophole in this provision which might allow the Soviets 12 free flight tests of a second new type ICBM, or 1 free flight test each for 12 new type ICBM's. In fact, the Carter administration argued consistently against the possibility of just such a potential loophole. The Carter administration also argued that SALT II could not be circumvented in its testing provisions, thus also denying any loophole. Finally, the Carter administration promised to challenge Soviet violation or circumvention of article IV, paragraph 9 in the Standing Consultative Commission if the Soviets tested more than one new type ICBM.

Secretary Vance's letter of submittal of the SALT II Treaty, June 21, 1979—page 7, The SALT II Agreement, U.S. Department of State—shows that the Carter administration consistently interpreted the SALT II Treaty as allowing the testing and deployment of only one new ICBM.

Secretary Vance's letter of submittal of SALT II, June 21, 1979:

The (SALT II) Treaty also limits qualitative improvements in ICBMs. Article IV permits each party to *flight test* and deploy only *one* new type of ICBM, which must be 'light' as defined by the Treaty.

Certain key parameters of each existing ICBM type may not be varied by more than five percent, plus or minus, from previously tested missiles of that type . . ." (Emphasis added.)

The State Department SALT II glossary, of June 18, 1979, stated on p. 62 the following definition:

New Type of ICBM. The U.S. and the USSR have agreed, for the period of SALT II, to limit each side to only *one* new type of ICBM. Specific technical criteria have been established to distinguish between new types of ICBMs and existing types of ICBMs. These criteria include such physical parameters as missile length, maximum diameter, *throw-weight*, launch weight, and fuel type . . ." (Emphasis added.)

In the June 1979, State Department selected documents No. 12A, the SALT II Agreement, the Carter administra-72, "SALT II: Secretary Vance's Testimony," July 9-10, 1979, stated on page 2:

Based on their (i.e., the Soviets) past practices, they could be expected to acquire several entirely new types of strategic land-based missiles by 1985; the treaty holds them to *one*. (Emphasis added.)

The "SALT II Basic Guide," Department of State, May 1979, stated on page 6:

Each side will be permitted *to test* and deploy only *one* new type of ICBM for the duration of the Treaty. This exception gives the United States the right to proceed with the MX missile. In permitting the Soviets only *one* new type of ICBM, this provision will inhibit the Soviets in their past practice of deploying three or four completely new types of ICBMs, with substantially different and improved characteristics, with each new generation of ICBMs. (Emphasis added.)

The key Carter administration statement is quite explicit in denying any loophole.

Department of State current policy No. 65, April 1979, "The Facts of SALT II," stated on page 1:

> That limitation to only *one* new type of ICBM is itself *a most significant qualitative control.* To insure that it has real meaning, the modernization of existing ICBMs will be limited so that *neither side can circumvent the limitation to one new ICBM.* There will also be other qualitative limitations which are designed to slow the strategic competition. (Emphasis added.)

Thus, according to the Carter administration, article IV, paragraph 9, was one of the most important provisions of SALT II, and it could not be circumvented. There was no loophole during the first 12 flight tests.

"SALT II: The Reasons Why," Department of State, May 1979, stated on page 2:

> For the period of the Treaty, for example, each nation will be permitted only *one* new type of intercontinental ballistic missile (ICBM). (Emphasis added.)

U.S. Department of State special report No. 46 (revised) May 1979, "The Strategic Arms Limitation Talks," also stated on page 2:

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Finally, in *SALT II: Two Views*, the U.S. Department of State, current policy No. 62, April 1979, stated on page ?:

> The Treaty limits each side to *developing*, and deploying *one* completely new ICBM before 1985. This provision will inhibit the *qualitative* expansion of the arms race. (Emphasis added.)

On page 9 of the same document the Carter Stae Department argued that SALT II would:

> Limit each side to *one* new ICBM type, with a maximum of 10 re-entry vehicles. (Emphasis added.)

In sum, the Carter and Reagan administrations' consistently interpreted SALT II's, article IV, paragraph 9, as allowing the flight-testing of only one new type of ICBM on each side. The public record and the unclassified facts are clear. The Reagan administration is forced to conclude publicly that the Soviets are in violation of the SALT II Treaty by flight-testing two instead of only one new ICBM.

As President Reagan himself publicly stated on February 23, 1983: "This last one comes the closest to indicating that it is a violation." Indeed, the PL-5 is a conclusive Soviet SALT II violation, as is the reported high encryption level of the telemetry of the PL-5.

Mr. President, I ask unanimous consent that a letter addressed to the President of the United States, which I delivered to the White House today, together with attachments, be included in the RECORD as a part of my remarks.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON ENERGY
AND NATURAL RESOURCES,
*Washington, D.C., March 23, 1983.*

President RONALD REAGAN,
*The White House*
*Washington, D.C.*

DEAR MR. PRESIDENT: As you know, I have been in the forefront of the opposition to the 1979 SALT II Treaty, which is unequal and therefore inconsistent with U.S. law. In accordance with another law, I also led a successful Senate effort in September 1977 to prevent President Carter's extended or prolonged compliance with the expired SALT I Interim Offensive Agreement from hindering U.S. strategic modernization programs. There remain significant Constitutional, legal, national security, and political problems with prolonged U.S. unilateral compliance with a SALT II Treaty, which has not received the advice and consent of the Senate for Presidential ratification.

Since June 18, 1979, when SALT II was signed, both the U.S. and the U.S.S.R. have been obligated under traditional international law to do nothing which would "defeat the object and purpose" of the SALT II Treaty still unratified on both sides. U.S. policy under both President Carter and yourself is that the U.S. would do nothing to "undercut" SALT II, as long as the Soviets show "equal restraint." The U.S. is complying precisely with all the provisions of the unratified SALT II Treaty, according to the Secretary of State's testimony and to recently declassified Defense Department directives. Without debating the wisdom of SALT II and without accepting the properiety of the U.S. position that we will do nothing that would "undercut" the SALT II Treaty, it is recognized that the U.S. is complying with SALT II. We at least have a right and an obligation to determine whether the Soviets are meeting the stated U.S. criteria for that policy, i.e., that the Soviets show "equal restraint" and do nothing to "defeat the object and purpose" or to "undercut" SALT II. Whether or not the Soviets should be held to compliance with the precise provisions of SALT II, like the U.S. is disputable. But under any interpretation of Soviet obligations under SALT II, a Soviet violation of a fundamental provision of SALT II constraining new type ICBMs would both "undercut" and "defeat the object and purpose" of SALT II, and can not be regarded as restraint.

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Mr. President, I respectfully ask you some

ance with their legal obligations under SALT II not to defeat its "object and purpose', because I strongly believe that the American people need to be told the straight truth about behavior.

1. Article IV Paragraph 9 limits the Soviets to flight-testing only one new type ICBM. Do you believe that the Soviets are defeating the "object and purpose" of SALT II by flight testing two new ICBMs? (see attached articles)

2. Do you believe that the Soviet SS-18 ICBM rapid reload/refire capability circumvents or violates all the launcher ceilings of SALT II, as implied on pp. 17, 19, and 21 of the March 1983 Defense Department book Soviet Military Power?

3. Do you believe that the Soviets have SS-16 ICBMs in an operational status at the Plesetsk Test Range, and that any SS-16 operational capability constitutes SS-16 Deployment? Does this violate the SALT II bans on SS-16 Deployment? Do you agree with Assistant Defense Secretary Perle and former ACDA Director Rostow that there is compelling evidence of the SS-16's deployment? Do you agree with the recent ACDA study confirming SS-16 deployment?

4. Do you believe that the Soviet deployment of AS-3 Kangaroo ALCMs with a range of "650 kilometers" (noted on page 61 of the September 1981 edition of the Defense Department's Soviet Military Power) on TU-95 Bear bombers should cause all TU-95 Bear aircraft to count in SALT II's 1320 ceiling on MIRVed missiles and bombers equipped with ALCMs having range greater than 600 kilometers? Are the Soviets currently under this ceiling? Is Soviet failure to declare TU-95's equipped with AS-3's in their SALT II Data Exchange a Soviet falsification of an integral part of SALT II? Are Anti-Submarine Warfare and ALCM carrying TU-95 Bear bomber variants still in production, and are the Soviets testing a new, long-range ALCM on the Bear? Would testing this ALCM on Bears also cause all Bears to count in the 1320?

5. Do you believe that the Soviets have tested and deployed ALCMs with range greater than 600 kilometers on the Backfire bomber? Does this testing and equipping Backfires with long range ALCMs violate the Brezhnev Backfire Statement, another integral part of SALT II, and provide additional reason for counting the already intercontinental Backfire in both the 1320 and 2250 ceilings? Do you believe the Soviets are producing Backfires at a rate greater than 30 per year, also in violation of the Backfire Statement as Undersecretary of Defense DeLauer has testified to Congress?

6. Do you believe that the high Soviet level of telemetry encryption on the following missiles—SS-NX-20 SLBM, SS-NX-19 SLCM, SS-18 Mod X ICBM, SS-20 IRBM, the PL-4 ICBM, the PL-5 ICBM—violates the Article XV prohibition on deliberate interference with US verification?

7. Do you believe the massive Soviet strategic camouflage, concealment, and deception program also constitutes deliberate interference with US verification?

8. Do you believe that the Soviets should deactivate over 250 strategic delivery vehicles in order not to "undercut" SALT II and show "equal restraint"? How many US strategic delievery vehicles counted in SALT II are being deactivated unilaterally, and has the Soviets to deactivate an equal number to show "equal restraint?"

9. Are the Soviets violating the 1972 Agreement on Basic Principles of US-Soviet Relations, which is mentioned in the Preamble to SALT II as a fundamental element of SALT II?

10. Do you believe that former Soviet KGB Chief Yuri Andropov directed the KGB and the Bulgarian intelligence service to attempt to assassinate Pope John Paul II in June 1981? What are the implications of the evidence of the KGB connection to this plot for further arms control negotiations with the Soviets, and US-Soviet relations in general?

11. Do you believe that the Soviets have violated the Threshold Test Ban Treaty?

12. Do you agree with former Secretary of State Kissingner and former Defense Secretary Laird that the Soviets have violated both SALT I Agreements?

13. Do you believe that the recent deployment of TU-95 F (or TU-142) Bear Anti-Submarine Warfare bombers with confirmed operational bomb bays to Cuba can be defined as Soviet "offensive weapons" in Cuba? Do these Bear bombers with functional bomb bays constitute yet another violation of the Kennedy-Khrushchev Agreement, this time clear cut and conclusive? If these ASW Bears do not have Functionally Related Observable Differences distinguishing them from Bears which do count in SALT II, yet are confirmed to be offensive weapons in violation of the Kennedy-Khruschev agreement, should ASW Bears also count in SALT II?

Your prompt answers to these questions could have a significant bearing on several issues currently being debated in Congress; the nuclear weapons freeze resolution, the need for increased aid to El Salvador, overall US policy toward Cuba and Central America, the defense budget, US strategic modernization programs, and US arms control proposals. I hope you will be able anaswer them as promplty as possible, in order to contribute your best judgements to the Congressional debate.

Sincerely,

JAMES A. MCCLURE,
*U.S. Senator.*

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SOVIET CHEATING

(By Rowland Evans and Robert Novak)

Convinced that the latest Soviet missile test was an out-and-out violation of the SALT II treaty, middle-level administration officials agreed behind closed doors that President Reagan should break precedent and take the violation directly and publicly to the Kremlin. If Secretary of State George Shultz and Defense Secretary Caspar Weinberger go along, this tough decision would be posed for Reagan: whether to junk cumbersome verification procedures that always have thwarted the United States in the past and, instead, challenge the Soviet Union publicly to prove that it did not in fact violate SALT II. If he accepts that recommendation, Reagan would in effect only be completing the thought he uttered Feb. 23, when he told reporters that the Feb. 8 Soviet missile test "comes the closest to indicating that it is a violation."

Ever since the first SALT treaty, in 1972,

any suspected violation has simply been handed over to a U.S.-Soviet commission for investigation. "That consigns the issue to months and months of futile palaver," one high administration official told us. The Feb. 8 test of a "new" intercontinental missile, he said, is "too serious for routine handling."

Gathered at the extraordinary March 8 session where officials just under the top level from the National Security Council, State Department, Pentagon, Central Intelligence Agency and Arms Control and Disarmament Agency (ACDA). The meeting was co-chaired by Adm. Jonathan Howe, head of the State Department's Political-Military Bureau, and Assistant Secretary of Defense Richard Perle.

Howe first suggested that—despite strong evidence presented by the CIA that the Soviet test was an outright violation of SALT II—the United States should take its case to the U.S.-Soviet commission as usual. Disagreement came from Dr. Manfred Eimer, confirmed by the Senate only the day before as chief of ACDA's Verification and Intelligence Bureau. He argued that the strength of the evidence and the peril to the nuclear balance of continuing Soviet testing required an immediate response. Indeed, Eimer argued that the Feb. 8 test, together with an earlier Soviet test firing last October, raised the strong possibility of "multiple" violations. But while it might be hard to prove the "multiple" charge, he said, there was irrefutable evidence of at least a single violation.

The exact violation in last month's test is still a closely held secret, but it concerns the SALT II ban on more than a single "new" intercontinental missile, the Soviets appear to have tested two "new" missiles—the first in October, the second last month.

If true, that points to runaway Soviet gains in the profoundly important intercontinental missile competition while the United States scrupulously adheres to the unratified SALT II ban. The middle-level officials who want the president to take the Feb. 8 test to the Soviets frontally—and, if necessary, publicly—concluded that the United States cannot continue taking such awesome risks. It is now up to Ronald Reagan to reach a similar conclusion.